BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

TRAVIS K. FRAZIER Claimant	)	
VS.	)	
CITY GLASS & MIRROR INC. Respondent	)	Docket No. 1,003,135
AND	)	
SAFECO AMERICAN STATES INS. **FEDERATED MUTUAL INS. CO.** Insurance Carriers	)	

ORDER

Claimant requests review of a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on September 5, 2002.

ISSUES

The Administrative Law Judge (ALJ) found the claimant did not suffer an accidental injury arising out of and in the course of employment with the respondent; and, therefore denied compensation.

The sole issue raised on review by the claimant is whether the ALJ erred in determining claimant did not suffer accidental injury arising out of and in the course of employment.

Respondent and its insurance carrier, Safeco American States Insurance, argue claimant did not meet his burden of proof to establish an accidental injury arising out of and in the course of his employment. In the alternative, they argue the alleged date of accident of March 1, 2002, occurred when Federated Insurance was providing respondent's workers compensation insurance coverage.

Respondent and its insurance carrier, Federated Mutual Insurance Company, argue claimant failed to meet his burden of proof he suffered accidental injury arising out of and the course of his employment and the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant alleged he injured his back on March 1, 2002, while bending over and lifting glass onto scaffolding in the course of his employment. Claimant told his supervisor that his back was hurting again but he did not ask for medical treatment.

The claimant sought treatment at the emergency room on March 4, 2002. The history claimant gave at the emergency room indicated he had injured his back jumping on a trampoline approximately three weeks earlier and aggravated his back the night before picking up a child. There was no mention of a work-related incident lifting glass at work.

Claimant then sought additional treatment with Dr. Scott M. Teeter on March 8, 2002. Claimant again gave a history of leaning over to pick up his nephew on March 4, 2002, when he experienced severe pain in his back radiating down into his left lower extremity. Claimant noted that his back had bothered him intermittently for a couple of years for which he had occasionally sought chiropractic treatment. There is no mention of a work-related incident occurring on March 1, 2002.

When the primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from the injury including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.[1] It is not compensable, however, where the worsening or new injury would have occurred even absent the primary injury or where it is shown to have been produced by an independent intervening cause.[2]

The ALJ noted:

> If he [claimant] had any problems with the trampoline, if he had any problems with lifting glass at work, he was able to deal with it until he had this problem with lifting and/or bouncing his nephew. That was the straw that broke the camel's back and that was an intervening accident and that is the reason that the Claimant needed treatment and why he has been off work, so the Court will find that he did not – – if there was any compensable accident, it has been superseded by an intervening accident and the request for benefits is going to be denied.[3]

---

[1] *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

[2] *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997). See also *Bradford v. Boeing Military Airplanes*, 22 Kan. App. 2d 868, 924 P.2d 1263, *rev. denied* 261 Kan. 1084 (1996).

[3] P.H. Trans. at 57.

The contemporaneous medical records do not support claimant's position that he suffered a work-related accident on March 1, 2002. The contemporaneous medical records contain reference to prior occasions of back pain but do not contain mention of an incident on March 1, 2002. Moreover, there is specific mention of the non-work-related incident lifting a child which resulted in the immediate onset of back pain radiating into the legs which required emergency room treatment. The Board agrees with the ALJ's determination that claimant has failed to meet his burden of proof that he suffered accidental injury arising out of and in the course of his employment.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated September 5, 2002, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of December 2002.

_____
BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Matthew Thiesing, Attorney for Respondent/Safeco American States Insurance
Matthew J. Hempy, Attorney for Respondent/Federated Mutual Ins. Co.
Bryce D. Benedict, Administrative Law Judge
Director, Division of Workers Compensation